

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO ALLEGED UNAUTHORIZED)	
RATES AND SERVICES OF AMERICALL SYSTEMS)	
OF LOUISVILLE, INC.)	CASE NO.
)	90-026
)	
)	
_____)	
ALLEGED VIOLATION OF KRS CHAPTER 278)	

O R D E R

On February 9, 1990, the Commission initiated this investigation by Order requiring AmeriCall Systems of Louisville, Inc. ("AmeriCall") and any affiliate of AmeriCall to cease and desist from charging rates and charges not contained in its schedules of rates and conditions of service filed with the Commission. Further, AmeriCall was ordered to file all documents pertaining to the provision of "Commonwealth WATS" and any other service which is not tariffed and to show cause why it should not be fined pursuant to KRS 278.990 and be required to refund all unauthorized rates and charges collected.

On February 14, 1990, AmeriCall filed a motion to vacate the Commission's February 9, 1990 Order and for an expedited hearing in this proceeding. AmeriCall raised four arguments contending that: (1) the Commission's Order conflicts with KRS 278.250 and should be vacated as unlawful, (2) "Commonwealth WATS" constitutes a special contract offering and as such is exempt from Commission

regulation under Administrative Case No. 273,¹ (3) the Order has the effect of requiring a rate increase without 20 days' notice and a hearing as required by KRS 278.260 and KRS 278.270, and (4) the Commission's Order should be modified to exclude Exhibit 1 containing customer names, account numbers, and usage information as this data should have been granted confidential treatment.

AmeriCall has been ordered to immediately cease and desist from providing services at rates not contained in its filed schedules because such rates are a violation of KRS 278.160. AmeriCall asserts that it cannot be so ordered without a hearing. KRS 278.250 states that:

Whenever it is necessary in the performance of its duties, the commission may investigate and examine the condition of any utility subject to its jurisdiction. In conducting such investigation, the commission may proceed with or without a hearing as it deems best, but shall make no order without giving a hearing to the parties affected thereby.

AmeriCall's belief that this statute requires a hearing prior to an Order to cease and desist from unauthorized activity is misguided. The Public Service Commission is specifically mandated to enforce the provisions of this chapter pursuant to KRS 278.040, which states in part that "the public service commission shall regulate utilities and enforce the provisions of this chapter." This statute does not contemplate nor has the Commission required

¹ Administrative Case No. 273, An Inquiry Into Inter- and Intra-LATA Intrastate Competition in Toll and Related Services Markets in Kentucky.

that prior to ordering a utility to cease unauthorized activities a utility must be given a hearing.

AmeriCall next argues that the Commission's regulations permit utilities to offer services pursuant to special contracts, and that by definition, such arrangements are not subject to the tariffing requirement of KRS 278.160. AmeriCall also argues that its provisioning of "Commonwealth WATS" constitutes a special contract offering and that as a nondominant carrier it was exempted from filing special contracts pursuant to Administrative Case No. 273.

The Commission makes no regulatory distinctions between special contracts and tariffs. 807 KAR 5:011, Section 13 states:

Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this regulation applicable to tariffs containing rates, rules and regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable.

As there are no regulatory distinctions between special contracts and tariffs, it cannot be reasonably argued that "by definition, such arrangements are not subject to the tariffing requirement of KRS 278.160."²

KRS 278.160 mandates that every utility "file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service

² Motion to Vacate filed February 14, 1990 at page 3.

established by it and collected or enforced." (emphasis added) The Order in Administrative Case No. 273 dated May 25, 1984 orders that "all carriers certified as being nondominant . . . are hereby subject to the regulatory requirements of 807 KAR Chapter 5, as abbreviated and modified by this Order."³ The Order does not lift the statutory requirement to file all rates, whether by general tariff or by special contract. The Order specifically states "the nondominant carriers will be required to provide 20 days' notice to the public of proposed tariff changes and to file a copy of their tariffs with this Commission."⁴ It is clear that the Commission intended nondominant carriers to file tariffs and did not waive this requirement. Furthermore, since the requirement to file all rates is statutory whether accomplished by general tariff or special contract, it cannot be waived by Commission Order.

AmeriCall contends that the Order to cease and desist from charging unauthorized rates is tantamount to ordering AmeriCall to increase its rates because the untariffed rates are lower than AmeriCall's tariffed rates for the provision of operator services. However, AmeriCall's concerns are again misplaced. The Commission made no such finding that the rates charged by AmeriCall were too low or too high but has observed that AmeriCall is currently charging rates which it has not filed with the Commission, either

³ Administrative Case No. 273, May 25, 1984 Order at page 35.

⁴ Id., page 35.

by tariff or special contract, and is therefore charging an unauthorized rate in violation of KRS 278.160.

Finally, AmeriCall contends that the Commission's Order should be modified to exclude Exhibit 1 which is correspondence from the Division of Telecommunications concerning account summaries, customer names, and usage information. AmeriCall claims that had it provided the information to the Commission it would have requested confidential treatment. However, by providing the information to the Commission without requesting confidential status, the state agency gave its consent to the publication of such information. If the customer consents to publication of information, AmeriCall cannot claim that the information should have been confidential. Information which is held open to the public by customers or which is otherwise publicly available cannot be granted confidential treatment by the Commission.

The Commission, having reviewed the motion to vacate and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The motion to vacate the February 9, 1990 Order establishing this investigation is denied.

2. The hearing scheduled for April 23, 1990 is hereby rescheduled to May 21, 1990 at 10:00 a.m., Eastern Daylight Time, in the Commission's offices in Frankfort, Kentucky, to provide sufficient time for Commission Staff to perform an audit of rates and conditions for service offered by AmeriCall and any affiliate.

3. This May 21, 1990 hearing affords AmeriCall a sufficiently expedited proceeding; therefore, AmeriCall's request for an expedited hearing is moot.

4. AmeriCall shall file, within 5 working days of the date of this Order, all documents pertaining to the provision of Commonwealth WATS and any other service which is not tariffed including, but not limited to, rates and conditions of service, promotional sales material, customer applications, a list of customers with addresses, and billing records.

5. The Order of February 9, 1990 remains in full force and effect.

Done at Frankfort, Kentucky, this 20th day of April, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director